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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL.) 1561/2012**

Date of Decision: 30th July, 2013

GURPREET SINGH Petitioner
Through Mr. Khushbir Singh, Advocate

versus

STATE NCT OF DELHI & ORS. Respondent
Through Mr. Saleem Ahmed ASC with
Ms. Charu Dalal, Advocate
ASI Raj Kumar, PS Narela

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a writ petition under Article 226 of the Constitution of India for issuing direction in the form of mandamus to the respondent to register FIR against the persons named in complaint dated 9th July, 2012.

2. Briefly stated the factual matrix of the case is:-

The original allottee Manglu Ram is the bona fide allottee of property bearing No.16, Pocket-06, Sector-A/10, Narela as per the Demand Draft-cum-Allotment Letter issued in the year 1992. It was

revealed to Manglu Ram after perusing the record of DDA that DDA received a letter on behalf of original allottee Manglu Ram on 7th April, 1993 where a person had applied for allotment of the above said plot and to take possession and some amount was deposited by them with impersonated person acting on behalf of original allottee Manglu Ram. Possession was taken by that fake person acting in the name of original allottee Manglu Ram on the basis of forged signatures. The allotment had been shown in the joint name of Manglu Ram and his wife Kamlesh and perpetual lease deed was also prepared in their joint name whereas Smt. Kamlesh is an illiterate lady and does not know English. She always put thumb impression and now she is able to sign only in Hindi. Thereafter, series of documents were got prepared under a well hatched design. Sunil Kumar succeeded to achieve a *mala fide* motive and made false and fictitious correspondence with DDA on behalf of original allottee Manglu Ram and thereafter transferred the property by virtue of special Power of Attorney and General Power of Attorney. The original allottee Manglu Ram had transferred the lease hold rights to the petitioner and had handed over the possession of the plot to the

petitioner on 23rd March, 2012. However, on 2nd May, 2012, some anti-social elements entered in the plot and took forcible possession by breaking locks of the petitioner lying on the doors of the plot. Petitioner made a call at 100 number and asked for immediate police assistance and for restoration of the possession of the plot but no action was taken. The petitioner moved a complaint in police station Narela on 9th July, 2012 but no action was taken. A writ petition bearing No. 3833/2012 was filed and vide Order dated 3rd July, 2012, directions were issued to DDA to initiate vigilance enquiry over the entire episode and file report within stipulated period of time. Manglu Ram and his wife have been examined by DDA and they denied their signatures on any of the documents. As such, it was prayed that directions be given to the respondents to register a case against the offenders named in the complaint for commission of offences of cheating, impersonation, forgery, transfer of valuable securities, criminal breach of trust and conspiracy punishable under various provisions of Indian Penal Code.

3. In the status report filed by the respondent, it was submitted that on 9th July, 2012, the petitioner made a complaint vide DD No.

113-B against Anand Swarup Gupta and others. As per the contents of the complaint, he is the *bona fide* purchaser of plot No. 16, Pocket-6, Sector-A/10, Narela from his original allottee and the possession of the property had been infringed by Anand Swarup Gupta and others. Inquiry was conducted which revealed that the plot was initially allotted to Manglu Ram by DDA. The plot was sold by Manglu Ram to Sunil Kumar and, thereafter, Sunil Kumar sold the property to Lalit Kumar and Lalit Kumar had sold the property further to Harish Kumar and Vinod Kumar and lastly Harish Kumar and Vinod Kumar sold the property to Anand Swarup Gupta on 4th September, 1997 by Agreement to Sell (GPA). Later on, the property got converted from lease hold to free hold in the name of Anand Swarup and conveyance deed through DDA was executed before the Sub-Registrar on 10th February, 2009. The petitioner filed a Civil Suit No.3833/2012 on 13th June, 2012 before the High Court of Delhi for cancellation of series of documents executed in favour of Anand Swarup and other persons by Manglu Ram and his wife and certain directions were sought from DDA that he had purchased the property from Manglu Ram by an unregistered Agreement to Sell (GPA) and other

documents on 23rd March, 2012. The writ petition was disposed of on 3rd July, 2012 with the direction to the petitioner to represent his case before the DDA who would hold an inquiry into the allegations raised by him. Instead of making representation before the DDA, the petitioner filed this writ petition for registration of the case. Manglu Ram has also filed a Civil Suit No. 262/2012 against Anand Swarup Gupta as well as DDA which is pending in the Civil Court. Moreover, a case FIR No.223/2012 dated 2nd May, 2012 under Section 348/34 IPC was registered against Manglu Ram & Ors. at PS Narela, Delhi on the complaint of Anand Swarup Gupta. The investigation was conducted and during the investigation, the chain of documents was verified and statements of witnesses were recorded. Manglu Ram was arrested on 26th December, 2012. The case is still pending for investigation. It was submitted that the matter is of civil nature and civil suit is still pending. No police action is called for.

4. I have heard Sh. Kushbir Singh, learned counsel for the petitioner and Sh. Saleem Ahmed, ASC for respondent.

5. At the outset, it may be mentioned that although the petition has been filed against only four respondents, however, in the body of

the petition, at various places reference has been made to respondents No.5&6 without naming them and it is not clear as to whom the petitioner is referring in the petition at various places. Furthermore, the petitioner is claiming title through Manglu Ram and it is alleged that somebody else impersonated Manglu Ram and the perpetual lease deed was got prepared in the joint name of Manglu Ram and his wife Kamlesh whereas Kamlesh is an illiterate lady and is not able to sign in English. Thereafter, it is alleged that Sunil Kumar got the allotment of the plot in question and, thereafter, executed further documents of transfer in favour of other persons.

6. Perusal of the writ petition itself goes to show that he had filed a civil writ petition, wherein direction was given to make representation to DDA, who was to consider his representation by holding an inquiry as to how the perpetual lease deed was executed in the name of Manglu Ram and his wife when the allotment was only in the name of Manglu Ram. There is nothing to show that in pursuance to these directions any representation was made by the petitioner to DDA. Moreover, it is revealed from the status report that the petitioner has already filed a civil suit before this Court for

cancellation of series of documents executed in favour of Anand Swarup and Ors. Manglu Ram has also filed a civil suit which is pending before Senior Civil Judge, Rohini Court. FIR has been registered on the complaint of Anand Swarup Gupta and Manglu Ram was arrested on 26th December, 2012. The question whether there was any forgery in the document or someone else impersonated as Manglu Ram and got the perpetual lease deed executed in his name are disputed questions of fact which cannot be decided in the writ petition.

7. In *Himmat Singh Vs. State of Haryana & Ors.*, (2006) 9 SCC 256; *Mukesh Kumar Aggawal Vs. State of Uttar Pradesh and Ors.*, (2009) 13 SCC 693; *Subhashree Das @ Mili Vs. State of Orissa and Ors.*, (2012) 9 SCC 729, it was observed that disputed question of fact should not ordinarily be entertained in writ petition. The question whether the allotment was only in the name of Manglu or how the perpetual lease deed dated 22nd April, 1997 was executed in the name of Manglu Ram and his wife etc. can best be determined by the DDA and vide order dated 3rd July, 2012, the petitioner was directed to make a representation before DDA who was to consider

the same and to decide the same preferably within a period of 12 weeks. However, instead of resorting to that recourse, the petitioner has hastened to file the present writ petition.

8. Under the circumstances, without proper adjudication as to whether the persons named in the complaint dated 9th July, 2012 are the offenders or not, no direction can be given to the respondent to register a case against them as prayed in the writ petition. The respondents are, even otherwise, under a legal obligation to consider the complaint made by the petitioner in accordance with law and in case, any offence is made out against any person named in the complaint then to take action in accordance with law.

9. The petition is accordingly disposed of.

**SUNITA GUPTA
(JUDGE)**

JULY 30, 2013

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